

APPENDIX A-1

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

HENRY E. GOSSAGE,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2021-1559

Petition for review of the Merit Systems Protection
Board in No. SE-0731-01-0261-M-1.

ON MOTION

PER CURIAM.

O R D E R

In response to the court's February 24, 2021 order to show cause, the Merit Systems Protection Board urges dismissal of this petition for review as untimely. Henry E. Gossage opposes dismissal.

Mr. Gossage's petition filed at this court indicates that he seeks judicial review of an August 25, 2006 decision of an administrative judge of the Merit Systems Protection Board in SE-0731-01-0261-M-1, which on September 29, 2006 became the Board's final decision in that matter.

Section 7703(b)(1)(A) of title 5 of the U.S. Code states that a petition for review from the Board “shall be filed within 60 days after the Board issues notice of the final order or decision of the Board.” 5 U.S.C. § 7703(b)(1)(A). In his response to this court’s show cause order, Mr. Gossage argues that the cause of his untimeliness and delay in seeking judicial review was the result of misconduct on the part of the Office of Personnel Management.

This court has held that section 7703(b)(1)(A)’s deadline is jurisdictional and not subject to equitable tolling. *See Fedora v. Merit Sys. Prot. Bd.*, 848 F.3d 1013, 1016 (Fed. Cir. 2017) (confirming that § 7703(b)(1)(A)’s deadline is jurisdictional). Thus, we may only consider whether the petition for review was timely filed at this court and can not toll the deadline based on Mr. Gossage’s personal circumstances. Because the petition here was received outside of the 60-day filing deadline, we must dismiss.

Accordingly,

IT IS ORDERED THAT:

- (1) The petition for review is dismissed.
- (2) All pending motions are denied as moot.
- (3) Each side shall bear its own costs.

April 20, 2021
DATE

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FOR THE COURT

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court